

**REMARKS**

The office action of September 5, 2003, has been carefully considered.

It is noted that claim 5 is rejected under 35 U.S.C. 112, second paragraph.

Claim 1 is rejected under 35 U.S.C. 103(a) over the patent to Goss et al. in view of the patent to Patten.

Claims 1-2 are rejected under 35 U.S.C. 103(a) over Goss in view of the patent to Brungs.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) over Goss in view of the patent to Niebylski et al.

Claim 3 is rejected under 35 U.S.C. 103(a) over Goss and Patten and further in view of the patent to Richardson.

Claim 4 is rejected under 35 U.S.C. 103(a) over Goss and Patten and further in view of the patent to Provi.

In view of the Examiner's rejections of the claims, applicant has amended claim 5.

The claims have been amended to address the instances of indefiniteness cited by the Examiner. It is therefore respectfully submitted that the claims now on file particularly point out and distinctly claim the subject matter which applicant regards as the invention and that the rejection of claim 5 under 35 U.S.C. 112, second paragraph is overcome and should be withdrawn.

It is respectfully submitted that the claims now on file differ essentially and in an unobvious, highly advantageous manner from the constructions disclosed in the references.

Turning now to the references, and particularly to the patent to Goss, it can be seen that this reference discloses a spirit level having a level housing 54. There is no discussion by Goss concerning the material of the level body. There is no teaching concerning a level body of a foamed metal as in the presently claimed invention.

The patent to Patten discloses closed cell foam metal.

The Examiner combined these references in determining that claim 1 would be unpatentable over such a combination. Applicant respectfully submits that it would not be obvious to combine these references and there is no motivation provided in the references for such a combination. The Examiner argues that the combination is obvious in order to provide a light-weight level. Applicant has enclosed as an "Attachment" a table listing various hollow and synthetic levels and their weight in grams per meter (g/m). As is evident, hollow aluminum levels have a weight essentially between 360 and 520 g/m. A foamed aluminum level body pursuant to the present invention has a weight of about 1000 g/m. Thus, the present invention does not make a level that is lighter than the prior art. Furthermore, since the present invention does not have the objective of providing a lighter level, the motivation to combine the references to provide a lighter weight level as argued by the Examiner is of no relevance to the present invention. Thus, it is respectfully submitted that there is no motivation for combining the references to arrive at the presently claimed invention, which has a foamed metal body that is heavier than the prior art aluminum levels.

A level body made of foamed metal can be produced so that the body is essentially distortion free due to the uniform shrinkage of the foamed aluminum during cooling. A foamed plastic body does not shrink uniformly and thus can result in deformities. Also, a hollow aluminum body requires additional working steps to finish the measuring surface. Such steps are not necessary with a foamed metal body. There is no mention of these benefits of a foamed body for a level in either Goss or Patten. The only way in which these references are combinable, if they are combinable at all, is by impermissible hindsight reconstruction of the invention based upon the teachings of the present application.

In view of these considerations it is respectfully submitted that the rejection of claim 1 under 35 U.S.C. 103(a) over a combination of the above-discussed references is overcome and should be withdrawn.

The patent to Brungs discloses a foamed metal body. The Examiner combined this reference with Goss in determining that claims 1-2 would be unpatentable over such a combination. Applicant submits that the reasoning provided above in connection

with the combination of Goss and Patten applies equally here.

There is no suggestion for combining Brungs and Goss as argued by the Examiner to arrive at the presently claimed invention.

In view of these considerations it is respectfully submitted that the rejection of claims 1-2 under 35 U.S.C. 103(a) over a combination of the above-discussed references is overcome and should be withdrawn.

The patent to Niebylski discloses a coated foamed body. The Examiner combined this reference with Goss in determining that claims 1-3 and 5 would be unpatentable over such a combination. Applicant respectfully submits that there is nothing in the teachings of either of these references which would suggest a level body of a foamed metal as in the claims presently on file. The arguments presented previously apply equally to this rejection. A light-weight level is not the object of the present invention and thus there is not motivation for combining the references as argued by the Examiner.

In view of these considerations it is respectfully submitted that the rejection of claims 1-3 and 5 under 35 U.S.C. 103(a) over

a combination of the above-discussed references is overcome and should be withdrawn.

The patents to Richardson and Provi have also been considered. These references do not come closer to the presently claimed invention than the references discussed above and thus any detailed comments thereon at this time would be superfluous. Neither of these references has any suggestion for a foamed metal level body. Therefore, it is respectfully submitted that the rejections of claims 3 and 4 under 35 U.S.C. 103(a) are overcome and should be withdrawn.

Reconsideration and allowance of the present application are respectfully requested.

Any additional fees or charges required at this time in connection with this application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

By F. Kueffner  
Friedrich Kueffner  
Reg. No. 29,482  
317 Madison Avenue, Suite 910  
New York, New York 10017  
(212) 986-3114

Dated: December 3, 2003

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450, on December 3, 2003.

By: F. Kueffner  
Friedrich Kueffner

Date: December 3, 2003

# Attachment

Producer	Country	Construction of the body	Model	g/m
Stabila	Germany	hollow aluminium profile	70 E	360
BMI	Germany	hollow aluminium profile	Eurosstar	420
Epect	China	hollow aluminium profile		180
Richter	Germany	hollow aluminium profile	Piccolo	590
SOLA	Austria	hollow aluminium profile	AV 100	520
Stanley	USA	aluminium I-profile	42-074	515
Stanley	USA	synthetic material		500
SOLA	Austria	synthetic material	P 80	520